

Department of Legislative Services
 Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

House Bill 1096 (Delegate Hammen)(Chair, Health and Government Operations Committee)
 Health and Government Operations Education, Health, and Environmental Affairs

State Board of Physicians and Allied Health Advisory Committees - Sunset Extension and Program Evaluation

This emergency bill extends the termination date of the State Board of Physicians (MBP) and its six allied health advisory committees by five years to July 1, 2018. The bill implements recommendations of the Department of Legislative Services' (DLS) November 2011 full sunset evaluation of MBP and recommendations contained in the University of Maryland, Baltimore's (UMB) July 2012 report to MBP. The bill requires DLS to conduct a direct full evaluation of MBP by October 30, 2016.

Fiscal Summary

State Effect: Special fund revenues and expenditures for MBP and the advisory committees are maintained through FY 2018. The FY 2014 budget includes \$9.5 million for board operations. Special fund expenditures for MBP increase by \$5,100 beginning in FY 2014 for per diems and reimbursement of expenses for an additional board member. Future years reflect inflation.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Revenues	\$0	\$0	\$0	\$0	\$0
SF Expenditure	5,100	5,200	5,200	5,300	5,300
Net Effect	(\$5,100)	(\$5,200)	(\$5,200)	(\$5,300)	(\$5,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Dual Disciplinary Panels: The bill establishes two disciplinary panels, each consisting of 11 members, through which allegations of grounds for disciplinary action must be resolved. The board chair must assign each member of the board to one of the panels and select a member of each panel to serve as the chair of the panel. A quorum of a panel is seven members.

After preliminary investigation, a complaint must be assigned to a disciplinary panel, which must determine the final disposition of a complaint. The board may not approve or disapprove any action taken by a disciplinary panel. A disciplinary panel assigned a complaint may conduct additional investigation and enter into a consent order with a physician or allied health professional after conducting a meeting to discuss any proposed disposition of the complaint. A disciplinary panel must consult with the chair of the appropriate allied health advisory committee before taking any action against an allied health professional. If a complaint proceeds to a hearing, the chair of the disciplinary panel must refer the complaint to the other panel. A disciplinary panel must obtain two peer review reports for each allegation of a standard-of-care violation. A disciplinary panel, in conducting a meeting with a physician or allied health professional to discuss the proposed disposition of a complaint, must provide an opportunity to appear before the disciplinary panel to both the licensee who has been charged and to the complainant. If a disciplinary panel reinstates a license, it must notify the board of the reinstatement.

Board Composition: To provide sufficient membership to divide the board into two disciplinary panels, total board membership is increased from 21 to 22 members by adding a second licensed physician with a full-time faculty appointment to serve as a representative of an academic medical institution in the State.

Authority of MBP to Seek a Warrant: The bill repeals the authority of the board's executive director or another duly authorized investigator of the board, based on a formal complaint, to enter at any reasonable hour private premises where the board suspects that a person who is not licensed by the board is practicing medicine. Instead, the board, based on a complaint, may apply to a judge of the District Court or a circuit court for a search warrant to enter private premises where the board or a disciplinary panel suspects the unlicensed practice of medicine. The bill specifies what must be included on an application for a search warrant, the basis on which a judge may issue a warrant, and what must be specified in the warrant.

Reporting Requirements of Certain Entities and Penalty Authority: The bill authorizes MBP to impose civil fines against alternative health systems that fail to report certain

information so that the civil fine provisions related to reporting by hospitals and related institutions and alternative health systems are the same. Thus, the bill repeals the existing civil penalty of up to \$5,000 imposed by a circuit court for failure of an alternative health system to report and instead authorizes MBP to impose a civil penalty of up to \$5,000 on an alternative health system for failure to submit the required report. MBP, in consultation with all interested parties, is authorized to adopt regulations to define both the changes in employment or privileges as well as the actions by licensees that are grounds for discipline that must be reported by hospitals and alternative health systems to MBP.

The bill also consolidates the existing requirement that each court must report to MBP each conviction or entry of a plea of guilty or *nolo contendere* by a physician for any crime involving moral turpitude within 10 days of the conviction or entry of the plea.

MBP Duties Related to Allied Health Licensee Profiles: Online profiles of allied health licensees must include (1) a summary of charges filed (including a copy of the charging document until a disciplinary panel has taken action on or rescinds the charges); (2) a description of any disciplinary action taken by MBP or a disciplinary panel within the most recent 10-year period (including copies of any public orders); (3) a summary of any final disciplinary action taken by a licensing board in any other state or jurisdiction against an allied health licensee within the most recent 10-year period; (4) a description of a conviction or entry of a plea of guilty or *nolo contendere* by the licensee for a crime of moral turpitude; and (5) the public address of the licensee. MBP, on written request, must forward a written copy of a profile and must maintain a website on which all licensee profile information is available to the public. MBP also has to provide a mechanism for the notification and prompt correction of any factual inaccuracies in a licensee's profile.

Public Disclosure of Filing of Charges: A summary of charges filed against a licensee and a copy of the charging document must be posted on the licensee's online profile until the board takes action on or rescinds the charges. MBP must include a disclaimer stating that the charging document does not indicate a final finding of guilt by a disciplinary panel. MBP must post information related to charges filed within 10 days after the charges are filed.

Role of Allied Health Advisory Committees: With the exception of the Physician Assistant Advisory Committee (PAAC), which already has such a requirement, the chairs of each advisory committee must serve in an advisory capacity to MBP as a representative of the committee. Each committee must submit an annual report to the board. MBP must consider all recommendations of the committees and provide the committees an annual report on disciplinary matters involving the individuals regulated by the respective advisory committee. With respect to the Polysomnography Professional

Standards Committee, the committee must elect a chair once every two years. The bill also clarifies for that committee as well as the Athletic Trainer Advisory Committee and the Perfusion Advisory Committee that any disciplinary action on a licensee must be taken on the affirmative vote of a majority of a quorum of the board or a disciplinary panel.

Statement of Policy: The bill states that it is the policy of the State that health occupations should be regulated and controlled as provided in the Health Occupations Article to protect the health, safety, and welfare of the public. The health occupations boards, the majority of whose members are licensed or certified under the Health Occupations Article, are created to function as independent boards, with the intent that a peer group is best qualified to regulate, control, and otherwise discipline in a fair and unbiased manner the licensees or certificate holders who practice in the State.

Consolidation and Delineation of Board Powers: The bill clarifies that, in addition to other powers and duties, the board must (1) enforce Titles 14 and 15 of the Health Occupations Article; (2) adopt regulations to carry out the provisions of those titles; (3) establish policies for board operations; (4) maintain the rules, regulations, and policies of the board to reflect current practice; (5) oversee licensing and renewal requirements for physicians and allied health professionals; (6) maintain secure and complete records; (7) review and preliminarily investigate complaints; (8) develop and implement methods to ensure the ongoing competence of licensees; (9) ensure that an opportunity for a hearing is provided to an individual before any action is taken against the individual; (10) adjudicate nondisciplinary matters within the board's jurisdiction; (11) report all disciplinary actions, license denials, and license surrenders; (12) establish appropriate fees; (13) make recommendations that benefit the health, welfare, and safety of the public; (14) provide ongoing education and training to board members; (15) direct educational outreach; (16) develop and adopt a budget; (17) develop and approve an annual report; (18) approve contracts; (19) appoint standing and *ad hoc* committees; (20) delegate to the executive director the authority to discharge board duties; and (21) appoint members of the disciplinary panels.

Rehabilitation Fee: The bill clarifies that the fees charged by the board must include the cost of providing a rehabilitation program *for all licensees*.

Reporting Requirements: Uncodified language requires MBP, by October 1, 2013, and annually thereafter through 2018, to submit a report to specified committees of the General Assembly. The report must provide an update on:

- any changes to the board's disciplinary process and the effect of those changes on the complaint backlog and complaint resolution times;

- the progress of the board in procuring and implementing a new information technology system to improve data management;
- a long-term financial plan;
- financial data for the preceding fiscal year; and
- the progress of the board in implementing the recommendations in the DLS 2011 sunset evaluation.

Miscellaneous Provisions: MBP must adopt regulations that allow a licensed physician to earn up to five continuing education credits per renewal period for providing uncompensated, voluntary medical services. The bill also repeals MBP's authority to directly provide rehabilitation services for licensees.

Current Law/Background:

Board Composition: Of the 21 current board members, 1 must be a licensed physician with a full-time faculty appointment appointed to serve as a representative of an academic medical institution in the State appointed from a list containing three names from the Johns Hopkins School of Medicine and three names from the University of Maryland School of Medicine.

Investigation of Practicing Medicine without a License: Chapter 539 of 2007 (SB 255) authorizes the executive director of MBP or an authorized agent or inspector of the board, on a formal complaint, to enter into private premises to investigate allegations that a person is practicing, attempting to practice, or offering to practice medicine without a license. When reviewing Chapter 539, the Office of the Attorney General raised the concern that entry into private premises for this purpose is, in part, an entry to determine evidence of a crime. Because of that, both the Maryland Declaration of Rights and the U.S. Constitution require that the entry be supported by a warrant. MBP has not exercised the right to enter into private premises because of this, but the board continues to maintain that entry into private premises is needed to adequately investigate allegations of unlicensed practice of medicine.

Public Disclosure of Filing of Charges: After filing charges against a physician licensee or notice of initial denial of a physician license application, MBP and its advisory committees must disclose the filing to the public.

Inconsistent Reporting Mechanisms for Reporting Entities: Under § 14-413 of the Health Occupations Article, each hospital and related institution in the State is required to report every six months to MBP regarding (1) disciplinary action taken against licensed physicians who are employed by the entity or (2) denials of privileges to licensed physicians. Alternative health systems are required to submit similar reports to the board

under § 14-414 of the Health Occupations Article. Both sections also require a court to report to MBP each conviction or entry of a plea of guilty or *nolo contendere* by a physician for any crime involving moral turpitude.

However, the enforcement mechanisms regarding these two sections of law are different. Under § 14-413, the board has authority to impose a civil fine for failure to report. The imposition of the civil fine is not mandatory and is at the discretion of MBP. In contrast, authority to impose a civil fine against alternative health systems for failure to report under § 14-414 lies with the circuit courts of the State and is mandatory.

Compliance with the reporting requirements is also low. It is unclear whether hospitals, related institutions, and alternative health systems are just not reporting as required or whether those facilities have not taken any action against physicians so there is nothing to report. Statute does not specify if the reporting requirement still applies if there have been no disciplinary actions taken in a given institution.

Allied Health Advisory Committees: Several allied health professions fall under the jurisdiction of MBP. The six allied health advisory committees that assist MBP in its oversight role are PAAC; the Radiation Therapy, Radiography, Nuclear Medicine Technology Advisory, and Radiology Assistance Committee; the Respiratory Care Professional Standards Committee; the Polysomnography Professional Standards Committee; the Athletic Trainer Advisory Committee, and the Perfusion Advisory Committee.

Allied Health Licensee Profiles: MBP is required to provide online licensee profiles for physicians. While statute does not require MBP to provide online licensee profiles on allied health licensees, such profiles are provided by the board. The content of profiles, however, is not uniform between allied health professionals and physicians. Specifically, while profiles for allied health professionals usually contain a link to the consent or final order, there is no summary of the action taken as there is on physician profiles. In addition, allied health profiles do not include a summary of final disciplinary action taken by a licensing board in any other state or jurisdiction within the most recent 10-year period, as physician profiles do.

Maryland Physician Rehabilitation Program: MBP must assess each applicant for a license or renewal of a license to practice as a physician assistant a fee set by the board sufficient to fund the activities of the board's rehabilitation program. Although the program is available for physicians, physician assistants, and other allied health professionals, only physician assistants are specifically required to pay a fee to fund the program. Chapter 539 of 2007 repealed the requirement that physicians be assessed a separate fee to fund the physician rehabilitation program and peer review activities.

The bill clarifies that board fees must cover the cost of providing the rehabilitation program *for all licensees*.

Continuing Education: Several other health occupations boards allow their licensees to obtain at least some continuing education credit for *pro bono* work, including the State boards of Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists; Dental Examiners; Dietetic Practice; and Examiners in Optometry.

Rehabilitation Services for MBP Licensees: The Maryland Professional Rehabilitation Program evaluates and provides assistance to impaired physicians and allied health professionals in need of treatment for alcoholism; chemical dependency; and other physical, emotional, or mental health conditions. Chapter 539 of 2007 required the board to issue a request for proposals (RFP) to operate the program by January 1, 2008. If no responsive proposal was received, the board had the option to provide those services in house. Bids were requested in 2008 and 2009; however, a responsive proposal was not received. In September 2009, a third RFP was issued and the Center for a Healthy Maryland – an affiliate of the Medical and Chirurgical Faculty of the State of Maryland (MedChi) – was awarded the contract, which runs through December 31, 2014.

Maryland Program Evaluation Act: MBP is 1 of approximately 70 regulatory entities and activities currently subject to periodic evaluation under the Maryland Program Evaluation Act. Its six advisory committees are, likewise, subject to evaluation. The Act establishes a process better known as “sunset review” as most entities evaluated are also subject to termination, including the board, which is scheduled to terminate July 1, 2013.

DLS completed a full sunset evaluation of MBP and its advisory committees in November 2011. A copy of the DLS sunset report can be found at <http://dls.state.md.us/Content.aspx?page=104>. In total, DLS offered 46 recommendations related to licensing, complaint resolution, board resources, and other issues. Furthermore, DLS recommended that the termination dates for MBP and the related allied health advisory committees be extended for only one year as the board had failed to implement key recommendations and requirements from previous sunset evaluations and sunset legislation, comply with several statutory requirements, and adopt regulations even when required by law. Key recommendations from that report are reflected in this bill and specify that statute should be amended to:

- require MBP to disclose information on licensee profiles with a disclaimer stating that the charging document does not indicate a final finding of guilt by the board;
- require MBP to disclose the filing of charges against an allied health licensee and notice of initial denial of an allied health license application to the public, with a disclaimer stating that the charging document does not indicate a final finding of guilt by the board;

- codify the requirement that MBP give the complainant in a case the opportunity to appear before the board during a case resolution conference;
- authorize MBP to seek a warrant for entry into private premises for the purpose of investigating a formal complaint about the unlicensed practice of medicine and to require that MBP have such a warrant before entering into a private premises for those purposes;
- clarify that the board is required to provide online profiles on allied health licensees that, to the extent possible, contain the same information as provided on physician profiles;
- include a requirement, for each allied health advisory committee, that the committee submit an annual report to MBP, the committee chair serve in an advisory capacity to the board, and the board provide a report to the committee on disciplinary matters involving allied health professionals;
- authorize MBP, rather than requiring the circuit courts, to impose civil fines on certain entities that fail to report to the board; and
- clarify the applicability of the reporting requirement under §§ 14-413 and 14-414 of the Health Occupations Article for hospitals, related institutions, and alternative health systems, when an institution has not taken action against a licensee or denied privileges to a licensee.

UMB Report to MBP: As a result of the sunset findings, the board entered into a memorandum of understanding (MOU) with UMB to conduct an independent review of the board. The MOU required UMB to provide guidance to MBP regarding (1) its complaint resolution process; (2) how to respond to the sunset evaluation recommendations; and (3) how to meet its statutory responsibilities. In July 2012, UMB issued a report to MBP containing 18 recommendations derived from the sunset evaluation and other sources of information, most of which relate to the board's complaint resolution procedures. A copy of the UMB report can be found at http://www.mbp.state.md.us/forms/Final_BOP_report.pdf. Key recommendations from that report are reflected in this bill and include:

- the Maryland General Assembly should amend the Medical Practice Act to establish two separate panels to hear disciplinary cases, each acting separately, with each authorized to make a final determination in a case;
- a representative of the allied health professions advisory committee should participate as an *ex officio* member in board disciplinary processes when a member of their profession is the subject of a disciplinary hearing;
- the Maryland General Assembly should adopt a “statement of policy” guiding the actions of MBP;

- the Maryland General Assembly should increase the board size from 21 to 22 members, including making a change in board composition, and divide disciplinary matters between two panels; and
- the Maryland General Assembly should consolidate and more clearly delineate the duties and powers of the board.

Modifications to the DLS 2011 Recommendations: In October 2012, DLS reviewed the recommendations contained in UMB's report and the significant progress made by the board in implementing several of the nonstatutory recommendations contained in the DLS sunset report and improving board functions. Based on this review, DLS modified some of its original recommendations based on actions taken by MBP. At this time, DLS recommends that the General Assembly:

- extend the termination dates for the board and the related allied health advisory committees to July 1, 2018;
- require DLS to conduct a direct full evaluation of the board and the related allied health advisory committees by October 30, 2016;
- require the board to submit an annual report to specified committees of the General Assembly and DLS that provides an update on (1) any changes to the disciplinary process and the effect of those changes on the complaint backlog and complaint resolution times; (2) the progress of the board in procuring and implementing a new information technology system to improve data management; (3) a long-term financial plan and financial data for the preceding fiscal year; and (4) the progress of the board in implementing the 2011 sunset evaluation recommendations and any statutory changes affecting the board; and
- implement any statutory changes from the 2011 DLS sunset evaluation of the board and the July 2012 UMB report with which the General Assembly concurs.

The bill implements most of the statutory recommendations contained in both the DLS sunset evaluation and the UMB report.

Court Reporting Regarding Crimes of Moral Turpitude: According to the Judiciary, it has been unable to comply with the existing reporting requirements as the Judiciary only sometimes learns that an individual is a physician and it is difficult to determine which crimes are crimes of moral turpitude.

State Fiscal Effect: Special fund expenditures for MBP increase by \$5,110 in fiscal 2014 for the costs associated with one additional board member. This estimate includes a \$250 per diem and mileage reimbursement of \$33.90 (\$0.565 per mile for an average of 60 miles) for 18 meetings per year. While this bill is an emergency measure and will take effect on the date it is enacted, this estimate assumes it will take the board

until July 1, 2013, to identify and appoint an additional board member. Future years reflect inflation.

Additional Information

Prior Introductions: *As introduced*, SB 629/HB 824 of 2012 contained many similar provisions to this bill. Both bills were amended to require the Governor to appoint the chair of MBP and specify that the term of office for the chair is two years. HB 824 was enacted as Chapter 681 of 2012, while SB 629 was vetoed as duplicative.

Cross File: SB 672 (Senator Conway)(Chair, Education, Health, and Environmental Affairs Committee) - Education, Health, and Environmental Affairs.

Information Source(s): University of Maryland, Baltimore; Department of Health and Mental Hygiene; Department of Legislative Services

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Analysis by: Jennifer B. Chasse

Direct Inquiries to:
(410) 946-5510
(301) 970-5510